of Imported Goods) Rules, 2007 and rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. The definition is discussed in a later chapter.

## Transaction value at the time and place of importation

**6.2** Price should be at the time and place of importation. Since the wordings were similar in earlier section 14, the following case law is still relevant and valid.

***Place of importation*** - Place of importation means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse - rule 2(da) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2017 as amended on 26-9-2017.

***Price should be for delivery at the place of importation*** - Value at the place of importation does not mean that only expenses till goods enter Indian Customs water should be included. Import is an integrated process which culminates when goods land on land-mass of India so that they can be introduced in stream of supplies to form part of mass of goods within the country. Thus, all expenses upto the destination port, including freight, transit insurance, unloading and handling charges are to be included.

In *Essar Oil Ltd.* v. *CC* 2004 (174) ELT 379 (CESTAT), it was held that landmass of India where unloading occurs (usually a wharf of jetty) is the place of importation and all expenses incurred for bringing goods there are includible. In addition, 1% 'landing charges' [for loading, unloading and handling charges for delivery at the port] are also includible in Assessable Value.

### Price must be the sole consideration

**6.2-1** Price should be sole consideration for sale. If there is other consideration, it should be added to the transaction value.

In *Jindal Photo Films* v. *CC* 2002(141) ELT 202 (CEGAT), it was held that license fee related to know how embedded in machine has to be added to Assessable Value. In this case, the foreign supplier had not charged license fee but had stated that if semi-processed raw material is not purchased from the foreign supplier, flat annual license fee will be payable for seven years. It was thus obvious that price was not the sole consideration and hence the license fee, which was additional consideration, was addible.

***Price to include value of intellectual property contained in it*** - A software cannot be valued on basis of price of CD. In *Globe Entertainment* v. *CC* 2005 (180) ELT 258 (CESTAT), it was held that value of video cassettes cannot be valued on basis of material cost plus recording charges. Value of intellectual property i.e. serial recorded in cassettes has also to be taken into consideration. It is not value of material but value of intellectual property which is recorded in the cassettes.

### Price in case of high sea sale

**6.2-2** Price relevant for customs valuation u/s 14(1) is the price for delivery at time and place of importation.

In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. - *National Wire* v. *CC* 2000(122) ELT 810 (CEGAT) * *Godavari Fertilizers* v. *CC* (1996) 81 ELT 535 (CEGAT).

If the purchase is on high seas, the selling price will be naturally higher than the price at which the original buyer imported the goods. However, even if price is lower, the duty will be payable on price at which goods are sold on high seas basis to final importer.

Original price at which original buyer purchased the goods cannot be basis for valuation - *Excel Glasses Ltd.* v. *CC* 2004 (166) ELT 496 (CESTAT) (In this case, price was lower due to one year delay in arrival of ship).

In *Tata Power Co. Ltd.* v. *CC* 2009 (240) ELT 742 (CESTAT), the sale was on high seas. The agreement provided that service charges for services like tender negotiations, participation in international bidding etc. were payable. Bank charges, facilitation fee, demurrage and survey fees were payable at fixed rates as per agreement. It was held that all these are includible as the charges were condition of sale of goods.

[In *CCE* v. *Udayani Ship* 2001(129) ELT 387 (CEGAT), it was held that duty should be paid on the price which foreign supplier charged to importer and not the price paid to importer by domestic purchaser. However, this was based on particular facts of the case and it was observed that there is a possibility of evasion of duty payable at proper value. Thus, this is not a universal rule].

CBE&C vide circular No. 32/2004-Cus dated 11-5-2004 has clarified that the valuation should be on basis of last sale price. Even if there are more than one high sea sales, the last sale price should be taken for purpose of valuation, as that is the price at which final importation has been caused. If importer is unable to produce original invoice, high sea sale contract etc. to establish link, valuation can be done on basis of Valuation Rules.

Earlier, as per public notice No. 145/2002 dated 3-12-2002, Customs House had prescribed addition of 2% towards High Seas Sale (HSS) commission to original value for assessment of goods on high seas sale basis.

In *Bhansali Engineering* v. *CC* 2011 (263) ELT 728 (CESTAT), it was held that there was no direction in trade notice that trade should adopt HSS plus 2% in all cases. Value for customs would include service charges and profit of seller and other expenses incurred before clearance of goods for home consumption (Now the circular dated 11-5-2004 makes no provision of 2% addition).

***High seas sales agreement to be on stamp paper and dated after ship commences journey*** - As per CC, ACC. Mumbai Facility Notice No. 18/2012 dated 22-5-2012 [280 ELT T15], High Seas sale agreement should be on stamp paper of ₹ 100 in Maharashtra [The reason given is that he agreement is similar to Customs bond. Really it is not similar to customs bond at all. However, instead of fighting over petty issues, advisable to execute agreement on stamp paper of value as per State law. The agreement date should be after the ship has started sailing, not because law requires so, but to avoid harassment of customs and sales tax authorities].

## Rate of Exchange for Customs Valuation

**6.3** Exchange rate as applicable on *date of presentation of bill of entry* u/s 46, as prescribed by CBE&C (Board) should be considered. As per *Explanation* (a) to section 14(2) of Customs Act, the rate of exchange will be determined by CBE&C or ascertained in such manner as CBE&C may direct [Till 10-10-2007, the rate was prescribed under earlier section 14(3)(a) of Customs Act].

This rate cannot deviate widely from the exchange rate determined by RBI for foreign exchange transactions. If there is wide variation, it must be shown that Board (that time Central Government) has good reasons to do so. Otherwise, rate fixed by Board (that time Central Government) would be arbitrary. - *Indian Acrylics* v. *UOI* 1999(113) ELT 373 (SC 3 member bench). [In this case, RBI rate was Rs. 25.95 while rate of exchange as per customs notification was Rs. 31.44. Government did not explain why that rate was fixed.]

The condition of 'grant of entry inwards' is not provided for this purpose. Bill of Entry can be presented 30 days before expected date of arrival of vessel. If Bill of Entry is presented within that time and even if 'Entry Inward' is granted subsequently, rate of exchange prevalent on the date of presentation of bill of entry will be considered.

The date of first presentation of Bill of Entry is relevant for purpose of considering rate of exchange. If it is returned for correction and is represented after correction, the date after representation cannot be considered. - *Samar Timber Corporation* v. *ACC* (1995) 79 ELT 549 (Bom HC DB).

Customs duty is leviable on commission payable to Indian agent in Rupees. This should also be calculated on basis of rate of exchange as in force when Bill of Entry is presented, as announced u/s 14. This is because commission paid to Indian agent forms part of total price of imported goods - *CC* v. *District Controller of Stores* 2005 (186) ELT 448 (CESTAT).

***Rate of exchange in case of warehoused goods*** - Relevant exchange rate for valuation is as in force on date on which bill of entry is presented u/s 46. Bill of Entry is presented u/s 46 of Customs Act either for home consumption or for warehousing. Hence, in case of warehoused goods, exchange rate prevailing on the date on which Bill of Entry is presented u/s 46 is to be considered and *not* when Bill of Entry is presented u/s 68 for clearance from customs warehouse.

## WTO Valuation Agreement

**6.4** Valuation in Customs Act has to be done as per valuation rules. These rules are based on 'WTO Valuation Agreement' (Earlier termed as GATT Valuation Code). *These rules are only for valuation of imported goods and not applicable to export goods.*

***GATT to WTO -*** General Agreement on Tariff and Trade (GATT) was an International forum for discussion on custom and other related problems so that barriers to world trade are removed. [Now GATT is replaced by WTO]. It was realised that there should be a common code for valuation to provide for greater certainty and utility. 'GATT Valuation Code' was formed with this concept in view. The new code came into effect on 1st January, 1981. Some members like USA and EEC introduced the GATT Valuation System immediately. India implemented the code from 18th August, 1988 by amending 'Customs Valuation Rules'. [Pakistan and Bangladesh adopted GATT valuation system only in year 2000].

After formation of WTO, the GATT Valuation system is now termed as 'WTO Valuation Agreement'. - *Chapter 1 Para 2.7 of CBE&C's Customs Manual, 2011.*

Under the WTO Valuation Agreement (earlier GATT code), 'transaction value' i.e. price at which the goods are actually sold is principal yardstick. However, it is not the only criteria for determining 'value' for Customs purposes.

Before introducing the valuation code in 1988, section 14(1A) was inserted in Customs Act which provided that subject to provisions of section 14(1), valuation will be done as per valuation rules. Statement of Object and Reasons provided while introducing the amendment specifically stated that section 14 is being amended to enable Central Government to make rules on the basis of GATT Code of valuation for determination of price of imported goods. It was also stated that India is required to implement GATT valuation code as India is contracting party to agreement on implementation of Article VII of GATT entered during Tokyo round of Multilateral Trade Negotiations.

In view of this, validity of valuation rules has been upheld in *Essar Steel Ltd.* v. *UOI* 2001(128) ELT 353 (Del HC DB).